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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

19 CR 39 (JMF)

5 SHAO JUN GUO, ET AL.,

6 Defendants.

7 -----x

8 New York, N.Y.
9 January 31, 2019
11:42 a.m.

10 Before:

11 HON. JESSE M. FURMAN

12 District Judge
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APPEARANCES

GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York

ELIZABETH ESPINOSA

RYAN FINKEL

Assistant United States Attorneys

BENNETT M. EPSTEIN

Attorney for Defendant Shao Jun Guo

LISA SCOLARI

Attorney for Defendant Jian Feng Jiang

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DIANE FERRONE

LAWRENCE J. FREDELLA

Attorneys for Defendant Zhurong Gao

STEVEN G. BRILL

Attorney for Defendant Shui Ying Lin

DANIEL A. MCGUINNESS

Attorney for Defendant Wo Kit Cheng

ALSO PRESENT:

NANCY WU, Mandarin Interpreter

BRENDA CHIN, Foochow Interpreter

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(Case called)

THE COURT: This is in the matter of United States v. Guo, et al. Counsel would you please state your names for the record.

MS. ESPINOSA: Good morning, your Honor. Elizabeth Espinosa and Ryan Finkel for the government. And we're joined at counsel table by Postal Inspector John Galvin.

MR. EPSTEIN: Good morning, your Honor. Bennett M. Epstein. I'm appointed to represent Shao Jun Guo, who is the first named defendant in this case.

MS. SCOLARI: Good morning, your Honor. Lisa Scolari for Jian Jiang Feng, who is in the jury box being assisted by the Mandarin interpreter. The Court should be aware, as I've advised the government, that my client's correct name is Jian Feng Jiang. The middle name on the indictment is actually his last or family name.

THE COURT: Mr. Epstein, could you tell me where your client is seated.

MR. EPSTEIN: Yes. He's seated at the first seat and assisted by the Mandarin interpreter.

THE COURT: All right. Thank you.

MR. LIND: Richard Lind. I was appointed for Ms. Yue Juan Chen who is seated in the white shirt raising her hand. New counsel has been retained and I request to be relieved.

THE COURT: All right. Give us a moment on that

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1 front.

2 Before we go there, Ms. Scolari, am I correct that the
3 name is just inverted so that -- what is on the indictment is
4 the third name should be the middle name?

5 MS. SCOLARI: Yes, your Honor. Thank you.

6 THE COURT: And counsel, retained counsel for, I don't
7 know if it's Ms. Chen or Ms. Juan.

8 MR. HEIFERMAN: On behalf of Ms. Chen, your Honor,
9 I've been retained, Justin Heiferman 136-20 38th Avenue,
10 Flushing, New York.

11 THE COURT: Good morning.

12 And is Mr. Fredella here as well?

13 MR. FREDELLA: Yes, your Honor. Lawrence Fredella
14 F-R-E-D-E-L-L-A. 30 Wall Street, 8th Floor, New York
15 New York. I'm going to represent the fourth defendant Zhurong
16 Gao G-A-O. There is a Fuzhou interpreter present in the
17 courtroom. Ms. Gao is seated here with the purple and white
18 shirt.

19 THE COURT: So I have been told that both of you wish
20 to or were planning to represent both Ms. Chen and Ms. Gao but
21 is that incorrect?

22 MR. FREDELLA: That's going to be incorrect at this
23 time. That was the case yesterday. We spoke with the
24 Assistant U.S. Attorney who indicated that they might move for
25 a Curcio hearing. And in order to avoid that we've separated

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1 out the defendants. Our law firms are actually separate. So
2 Mr. Heiferman will represent Ms. Chen and I will represent
3 Ms. Gao.

4 THE COURT: OK. Ms. Espinosa, let me ask you. Any
5 issues on that front? And if not, can we let Mr. Lind and I
6 think counsel -- appointed counsel for Ms. Gao, can they go?

7 MS. ESPINOSA: We have no objection to that, your
8 Honor. That's fine.

9 THE COURT: Keep your voice up.

10 MS. ESPINOSA: I apologize, your Honor. No objection
11 from the government to that.

12 THE COURT: OK. With that I'll relieve Mr. Lind and
13 you may go. And, I think, Ms. Ferrone, you're here for
14 Ms. Gao; is that correct?

15 MS. FERRONE: Yes, your Honor. I'm here on behalf of
16 Dawn Cardi who had an 11 a.m. before Judge Berman. Ms. Cardi
17 was assigned counsel and we would ask to be relieved in light
18 of new counsel being retained.

19 THE COURT: All right. Little did Ms. Cardi know that
20 she could have been here by now but, be that as it may, she's
21 relieved. You are excused.

22 We will proceed.

23 Number five, Mr. Brill.

24 MR. BRILL: Yes. Good morning, your Honor. Sullivan
25 and Brill by Steven Brill for Shui Ying Lin. She's here as

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1 well in your jury box in seat no. three. And she's also being
2 assisted by the Mandarin interpreter.

3 THE COURT: All right. Very good. And, finally, last
4 but not least.

5 MR. McGUINNES: Good morning, your Honor. Daniel
6 McGuinnes for Wo Kit Cheng. He is second to the right in the
7 jury box. And he's being assisted by the Mandarin interpreter
8 as well.

9 THE COURT: Good morning still. Welcome to all of
10 you. Apologize for the delays this morning. I also apologize
11 that we're working without the microphone system so the
12 interpreter is doing her best. But please speak up and speak
13 into a microphone so that I can hear you and the court reporter
14 can hear you and what have you.

15 We are here for the initial conference and arraignment
16 in this matter. Unless there's something we should address
17 first I'll proceed to arraign each of the defendants on the
18 indictment 19 CR 39.

19 Ms. Espinosa, anything to take up before that?

20 MS. ESPINOSA: No, your Honor. We can proceed to the
21 arraignment.

22 THE COURT: So, for the defendants, what I will do is
23 I'm going to go in order and ask each of you four questions.

24 Counsel if you want when I get to your client you can
25 stand and go near them if you like or you can stand and be

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1 wherever you are presently if you like.

2 MS. SCOLARI: Your Honor, just so the Court knows, we
3 had thought the defendants had been arraigned in magistrate's
4 court so I have not prepared Mr. Jiang to answer the Court's
5 question. So I would definitely like to stand next to him and
6 assist him because he's not expecting to be arraigned now.

7 MS. ESPINOSA: Just to clarify, your Honor. There was
8 some confusion in magistrate court as to whether they were
9 being arraigned and presented or merely arraigned. Judge
10 Lehrburger did withdraw the three guilty pleas on the record
11 that were entered -- not guilty, I apologize. Not guilty
12 pleas. And I believe the docket notices were entered by
13 mistake so all six do still need to be arraigned.

14 THE COURT: All right. My general practice is not to
15 refer for purposes of arraignment, at least if I'm in the
16 district. So that's consistent with my practice. In any
17 event, I will arraign them all. And counsel if you need --
18 does anyone need to speak with their client before?

19 MS. SCOLARI: It would be helpful, your Honor.

20 MR. FREDELLA: Yes, your Honor.

21 MR. HEIFERMAN: Yes your Honor.

22 THE COURT: Let me explain what we're doing and I will
23 give you a chance to speak with your client if you wish. My
24 plan for the defendants is I'm going to ask each of you four
25 questions. First, whether you have seen a copy of the

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1 indictment with the charges against you and whether it has been
2 translated into whatever your native language is. Second,
3 whether you have discussed the indictment with your lawyer.
4 Third, whether you would like me to read the indictment out
5 loud or do you waive its public reading. And last, how you
6 plead at this time, guilty or not guilty. So I'll ask each of
7 you those questions and counsel if you want a moment to speak
8 with your client please take it now.

9 (Counsel and defendants confer)

10 THE COURT: All right.

11 MR. FREDELLA: Thank you, your Honor.

12 THE COURT: So let me start with defendant number one,
13 Shao Jun Guo. I apologize in advance for mispronouncing.

14 MR. EPSTEIN: I think it's Guo.

15 THE COURT: As I said, I apologize in advance for
16 mispronouncing probably all of the names.

17 Mr. Guo, if you would please rise. Have you seen a
18 copy of the indictment 19 CR 39 containing the two charges
19 against you?

20 DEFENDANT GUO: Yes, I have.

21 THE COURT: And have you discussed the charges with
22 your lawyer, with Mr. Epstein?

23 DEFENDANT GUO: Yes, I did.

24 THE COURT: Do you waive the public reading of the
25 indictment?

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1 DEFENDANT GUO: Yes.

2 THE COURT: And how do you plead at this time, guilty
3 or not guilty?

4 DEFENDANT GUO: Not guilty.

5 THE COURT: Thank you. You may be seated.

6 Mr. Jiang, you can remain seated if you like. I know
7 you have an injury so if you want to remain seated that's fine.
8 Have you seen a copy of the indictment.

9 DEFENDANT JIANG: Yes, I have.

10 THE COURT: And I think I neglected to ask Mr. Guo
11 this.

12 Was it translated into your native language?

13 DEFENDANT JIANG: In Mandarin, yes.

14 THE COURT: And did you discuss it with Ms. Scolari
15 later?

16 DEFENDANT JIANG: Yes, I have.

17 THE COURT: And do you waive its public reading?

18 DEFENDANT JIANG: That's right.

19 THE COURT: And how do you plead at this time, guilty
20 or not guilty.

21 DEFENDANT JIANG: Not guilty.

22 THE COURT: All right. Thank you.

23 Could I just go back to Mr. Guo for one second.

24 Can you confirm that the indictment was translated
25 into your native language, into Mandarin?

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1 DEFENDANT GUO: Yes.

2 THE COURT: OK. Thank you. Now we'll move to
3 Ms. Chen. Have you seen a copy of the indictment?

4 DEFENDANT CHEN: (In English) Yes.

5 THE COURT: I see you answered in English.

6 You're welcome to speak whatever language you're most
7 comfortable in.

8 Have you discussed -- was it translated for you into
9 your native language?

10 DEFENDANT CHEN: Yes.

11 THE COURT: And have you discussed it with your
12 lawyer?

13 DEFENDANT CHEN: Yes.

14 THE COURT: And would you -- do you waive its public
15 reading?

16 DEFENDANT CHEN: Yes.

17 THE COURT: And how do you plead at this time, guilty
18 or not guilty?

19 DEFENDANT CHEN: Not guilty.

20 THE COURT: Thank you. You may be seated.

21 Ms. Gao, I understand you're a Fuzhou speaker; is that
22 correct?

23 DEFENDANT GAO: Yes.

24 THE COURT: Have you seen a copy of the indictment,
25 19 CR 39?

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1 DEFENDANT GAO: Yes.

2 THE COURT: And was it translated for you into your
3 native language, into Fuzhou?

4 DEFENDANT GAO: Yes.

5 THE COURT: And have you discussed it with your
6 lawyer?

7 DEFENDANT GAO: Yes.

8 THE COURT: And do you waive its public reading?

9 DEFENDANT GAO: Yes.

10 THE COURT: And how do you plead at this time, guilty
11 or not guilty?

12 DEFENDANT GAO: Not guilty.

13 THE COURT: Thank you. You may be seated.

14 Next, Ms. Lin. Have you seen a copy of the
15 indictment.

16 DEFENDANT LIN: Yes, I have.

17 THE COURT: Was it translated into Mandarin for you?

18 DEFENDANT LIN: Yes.

19 THE COURT: Did you discuss it with your lawyer?

20 DEFENDANT LIN: Yes.

21 THE COURT: Do you waive its public reading?

22 DEFENDANT LIN: Yes.

23 THE COURT: And how do you plead at this time, guilty
24 or not guilty?

25 DEFENDANT LIN: Not guilty.

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1 THE COURT: Thank you. You may be seated.

2 And last, Mr. Cheng. Have you seen a copy of the
3 indictment?

4 DEFENDANT CHENG: Yes, I have.

5 THE COURT: Have you discussed it with your lawyer?

6 DEFENDANT CHENG: Yes, I have.

7 THE COURT: Was it translated into your native
8 language, into Mandarin?

9 DEFENDANT CHENG: Yes.

10 THE COURT: And do you waive its public reading?

11 DEFENDANT CHENG: Yes.

12 THE COURT: How do you plead at this time, guilty or
13 not guilty?

14 DEFENDANT CHENG: Not guilty.

15 THE COURT: Thank you. You may be seated as well.

16 All right. Ms. Espinosa, if you could tell me a
17 little bit beyond what I might know from the indictment about
18 the nature of the charges here, that would be helpful.

19 MS. ESPINOSA: Yes, your Honor. As you see, it is a
20 case where the defendants are charged in trafficking in
21 contraband cigarettes and conspiracy to do the same. We are
22 preparing to begin producing discovery in this case. We intend
23 to make our first production early next week. The discovery in
24 the first production consists of photos and videos primarily.
25 And it is about 19 gigabytes of data. We intend to make

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1 subsequent productions as well, some of which will include
2 additional photos and surveillance video as well as documents
3 from subpoena returns, including some financial records,
4 ledgers, additional documents related to mailing history and
5 search warrant applications, etc. Some of the discovery will
6 require translation though I believe the majority of it will be
7 in English. The types involving translation will be recordings
8 of undercover buys, some ledgers, text message communication
9 and consensual recordings.

10 Your Honor, we'd also like to note that we, in an
11 abundance of caution, will be submitting a request for a
12 protective order that will only impact a very small percentage
13 of the discovery and will not have any impact on the first
14 production going out early next week. And this would be a
15 protective order in which we would seek to not limit the
16 defendants' right to view any of the discovery at all. It
17 would merely be to prevent them from separately possessing a
18 copy separate from their counsel and would only relate to the
19 identification of a cooperating witness.

20 Thank you, your Honor.

21 THE COURT: A couple of questions. First, did any of
22 these defendants make any postarrest statements?

23 MS. ESPINOSA: Yes, your Honor. Two of the defendants
24 made postarrest statements.

25 THE COURT: And who -- which ones?

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1 MS. ESPINOSA: Mr. Guo and Mr. Jiang in the indictment
2 listed as Mr. Feng.

3 THE COURT: Were those statements recorded?

4 MS. ESPINOSA: They were recorded, your Honor.

5 THE COURT: And Mirandised?

6 MS. ESPINOSA: Yes, your Honor.

7 THE COURT: And you mentioned search warrants. Can
8 you tell me a little bit more about that, where they were?

9 MS. ESPINOSA: Yes, your Honor. The search warrants
10 were executed when the defendants were arrested on a number of
11 locations in Manhattan and Brooklyn and a number of those were
12 seized -- and one location in Queens as well, I'm told.

13 We had also a GPS warrant and a prior package warrant
14 as well in this case.

15 THE COURT: All right. You mentioned text messages.
16 Were those obtained consensually?

17 MS. ESPINOSA: Yes, your Honor.

18 THE COURT: And what's the status of the speedy trial
19 clock?

20 MS. ESPINOSA: It's been excluded since indictment,
21 your Honor.

22 THE COURT: And how long would it take you to produce
23 all discovery in your possession?

24 MS. ESPINOSA: I expect, your Honor, we would be able
25 to produce everything in our possession currently within

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1 several weeks.

2 THE COURT: All right. Very good.

3 So why don't I give the government three weeks. Does
4 that suffice?

5 MS. ESPINOSA: I believe that should be sufficient,
6 your Honor, for what we have currently.

7 THE COURT: So I will give you three weeks to produce
8 discovery with the understanding that you'll be producing it on
9 a rolling basis. It sounds like you're starting that
10 imminently. And then counsel, as you may know, some of you
11 have appeared in front of me before. My general practice is to
12 set a pretrial motion deadline. Sounds like things will be a
13 little complicated here by virtue of the need for translation
14 of at least some materials. But my question for you, and if
15 you want to take a moment to confer with one another, is how
16 much time you would need to review the discovery and decide
17 what, if any, motions you plan to bring.

18 MR. EPSTEIN: Your Honor, could we ask for just a
19 brief clarification from the government. In our conversations
20 before your Honor took the bench we were told that there were
21 going to be two waves of discovery. So does the three-week
22 window which the government said they could produce discovery,
23 does that encompass both waves of discovery or is that just the
24 first wave?

25 THE COURT: I think that's all discovery with the

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1 understanding that the first wave with the videos and
2 photographs would be produced as early as tomorrow.

3 Is that what you said?

4 MS. ESPINOSA: We would -- I think early next week is
5 more likely than tomorrow for the first wave, but it would be
6 everything within three weeks, your Honor.

7 THE COURT: So everything within three weeks.

8 MR. EPSTEIN: Is the protected discovery going to be
9 produced on the same thumb drive that the rest of the discovery
10 is going be to produced on?

11 MS. ESPINOSA: The protective discovery, your Honor,
12 will not be included in the first production.

13 THE COURT: Speak up and into the microphone.

14 MS. ESPINOSA: I apologize, your Honor.

15 The protected discovery will not be included in the
16 first production so there will be no issue with regards to that
17 one. We can, for convenience, place it on a separate drive
18 or -- we can work with defense counsel to do what is most
19 convenient with regards to that.

20 MR. EPSTEIN: That's fine, Judge. Thank you.

21 THE COURT: And let me briefly address that. Counsel
22 should all confer with respect to the proposed protective
23 order. Obviously, if there are any disputes with respect to it
24 you can bring them to my attention. But if everybody consents
25 to it or is in agreement that it's appropriate, then the

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1 government can just submit it to me and it will presumably be
2 so ordered if I don't have a problem with it, and I would do
3 that sooner rather than later so it doesn't delay the
4 production of any of the discovery. So with that if you all
5 want to talk briefly about how long you would need, we'll go
6 from there.

7 (Counsel confer)

8 MS. SCOLARI: Your Honor, we have a consensus.

9 THE COURT: Hold on one second.

10 MS. SCOLARI: Sorry.

11 Your Honor, we would like until the end of May to file
12 motions. What we are considering is that we need approximately
13 two months to review the material. One of the reasons for that
14 is our clients, as you can see, don't speak English.
15 Consulting with them will require assistance of interpreters.
16 In addition, some of this material is going to require
17 interpretation. The government may be producing transcripts
18 but we don't know when. So chances are the defense is going to
19 have to do our own work in that regard. After we have two
20 months to review, we'd like to have a month to file motions.

21 I can tell you now, based on what I have seen, I do
22 anticipate a motion to suppress -- not the statements, although
23 there are statements attributed to my client, I have to,
24 obviously, explore that -- but a motion to suppress property
25 that was recovered from a location that was purportedly his.

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1 THE COURT: All right. Anyone else wish to be heard
2 on that or does Ms. Scolari speak for all of you?

3 All right. Good. I'll set a deadline for the filing
4 of any defense motions of May 24.

5 The government's opposition would be due -- I think
6 given the number of defendants I will give the government three
7 weeks until Jun 14 to oppose any and all motions in a single
8 consolidated submission.

9 And then any replies would be due by June 21.

10 I would say -- I don't know if there will be any
11 Bruton-type issues, but in my experience those tend to make
12 sense to defer those usually until closer to trial on the
13 theory that sometimes they are mooted for one reason or
14 another. So I would say hold off on any Bruton-type motions
15 but, otherwise, that's the deadline and briefing schedule for
16 any motions.

17 I will have you back shortly after the motion deadline
18 before the government's opposition is due not because I would
19 short circuit the briefing but just to get a jump on things.
20 If there is a hearing that would be necessary, we'll schedule
21 it at that time.

22 And in case you don't know, my practice is to schedule
23 a trial at the second pretrial conference. So when you come
24 back you should anticipate that I will be scheduling trial and
25 everybody should understand that when I schedule trial it is a

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1 firm date as far as I am concerned. So confer with one another
2 before the next conference with respect to both whether there's
3 a need for a hearing as to any motion and also with respect to
4 a trial date and then we will discuss those things at that next
5 conference.

6 In particular, I will have you back on Tuesday, June 4
7 at 3:30 in the afternoon. And, again, we'll talk about the
8 need for a hearing. Any motions that are filed, you should
9 certainly be prepared to address them, even if I will allow the
10 briefing to proceed along the schedule that I set, and a trial
11 date.

12 Any other matters that we need to discuss?

13 MS. ESPINOSA: Not from the government, your Honor.

14 MS. SCOLARI: Your Honor, I just had one issue as to
15 Mr. Jiang and you may wish to let the other parties go. It's
16 up to you.

17 THE COURT: Well why don't we address it, unless it
18 would be appropriate to let them go, let's just take it up and
19 then I'll let everybody go so I can get to the last matter on
20 my calendar.

21 MS. SCOLARI: Your Honor, I have handed up to your
22 deputy a subpoena that I would ask the Court to consider
23 signing. I've actually shown it to the government. They don't
24 object to it. It's for my client's personal medical records.
25 Although I can submit a HIPAA release, I often find that

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1 hospitals respond better when they get a subpoena from the
2 Court.

3 THE COURT: Ms. Espinosa.

4 MS. ESPINOSA: No objection from the government, your
5 Honor.

6 THE COURT: All right. I will sign that and you may
7 need a HIPAA release any way, I don't know.

8 MS. SCOLARI: I have it. Thank you.

9 THE COURT: I'll leave it to you.

10 So that's taken care of.

11 Is there an application with respect to the speedy
12 trial clock?

13 MS. ESPINOSA: Yes, your Honor.

14 I move to exclude time under the Speedy Trial Act
15 until June 4 at 3:30 p.m.

16 THE COURT: Any objection? If not, you can remain
17 quiet but if there is an objection this is your moment.

18 All right. I should say anything else from the back
19 table?

20 In light of that, I will exclude time under the Speedy
21 Trial Act between today and June 4, 2019. I find that the ends
22 of justice served by excluding that time outweigh the interests
23 of the defendants and the public in a speedy trial to allow the
24 defendants and counsel to review the discovery, consider
25 whether there are any motions to be brought and file those

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1 motions.

2 All right. Anything else? If so, this is your
3 moment. Otherwise, we will adjourn.

4 Thank you very much for your patience. Thank the
5 interpreters. And I'll stay on the bench. The matter is
6 adjourned.

7 (Adjourned)